NOMINATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

MALCOLM R. LOVELL, JR., OF THE DISTRICT OF COLUMBIA, TO BE UNDER SECRETARY OF LABOR

SEPTEMBER 25, 1981

Printed for the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE

88-493 O WASHINGTON: 1981

5541-23

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NOMINATION

FRIDAY, SEPTEMBER 25, 1981

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to notice, at 9:50 a.m., in room 4232, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman) presiding.

Present: Senators Hatch, Quayle, and Randolph.

Staff present: George Pritts, chief counsel.

Senator QUAYLE [acting chairman]. The committee will come to order.

I apologize for any inconvenience. I had told our distinguished Under Secretary of Labor to be that I would be here promptly at 9:30. It is way past that and I certainly apologize.

This morning we are considering the nomination of Mr. Malcolm R. Lovell, Jr., for Under Secretary of Labor. He is certainly no stranger to the Labor Department or to Members of the Senate and to the Hill. It is my distinct pleasure to have this opportunity to endorse President Reagan's decision to entrust the important post of Under Secretary to Mr. Lovell.

I am going to go ahead and insert the remarks that I have, and turn to the Under Secretary-designate of Labor, Mr. Lovell, and ask him to proceed.

[Senator Quayle's opening statement follows:]

OPENING STATEMENT OF SENATOR QUAYLE

Senator QUAYLE. We are considering the nomination of Mr. Malcolm R. Lovell, Jr., for Under Secretary of Labor. He is no stranger to the Labor Department. In the early seventies he was Assistant Secretary for Manpower at the Department, where he gained a wealth of experience in employment and training matters. That experience, however, has been just one of many chapters in a professional career heavily steeped in labor-management matters. In the decades following World War II, he was extensively engaged in bargaining negotiations and related labor issues as an executive of the Ford Motor Co. and later of the American Motor Corp. He also held leadership posts with the Michigan State Economic Opportunity Office and the Employment Security Commission. Since 1973, following his first tenure at the Department of Labor, he has served as president of the Rubber Manufacturers Association, where he has continued his expertise to bear upon the economic and labor-management issues facing that important industry.

In one sense the Department of Labor stands at the threshold of a new era. It follows one marked by a decade of active expansion of the Department's responsibilities into the labor relations of the private sector. We see this in the Occupational Safety and Health Act, the Employee Retirement Income Security Act (ERISA), the amendments to the Mine Safety and Health Laws, the amendments to the Longshore Act, and the Black Lung Benefits Act. The goals of these programs have sparked little quarrel. But their implementation often has. And of course the Department of Labor has played a substantial role in setting the tone and style by which these programs have affected the public. In response to the sharp criticism which these programs have evoked, the Department now faces a heavy responsibility to look at these programs afresh. It must reevaluate their strengths, their weaknesses, and their overall effectiveness. Moreover, it must consider these programs in relation to the collective bargaining process—that mechanism to which this Nation has entrusted the responsibility of resolving differences and of promoting mutual accord between labor and management.

Mr. Lovell has a unique blend of experience and expertise which can play a valuable and indispensable role in the Department's renewal and reevaluation of its mission of protecting the interests of all workers—both unorganized and organized—in this country.

We welcome this opportunity to endorse President Reagan's decision to entrust the important post of Under Secretary to Mr. Lovell.

STATEMENT OF MALCOLM READ LOVELL, JR., NOMINATED TO BE UNDER SECRETARY OF LABOR

Mr. LOVELL. Thank you very much, Mr. Chairman. I just have a few very brief remarks. Let me read them. I am pleased to be with you today and I am looking forward to responding to any questions that you may have.

The Labor Department has a long and distinguished history of serving the working men and women of America, and I am very pleased indeed to have the opportunity of helping Secretary Donovan in the difficult and challenging job of managing this important Federal establishment.

I am not without familiarity with many of the Department's functions but familiarity in itself is no key to success. I hope that I will have the capability of working with this Congress and our sister Federal agencies in a manner consistent with the high standards expected of this office.

Next year will be a particularly challenging one, as the President's economic program begins to take effect and as we turn our attention to improving the effectiveness of our regulatory process and to legislative challenges such as CETA reauthorization. I am personally looking forward to working with members of this committee and will do my best to assure that there is a close working relationship between the various agencies of the Labor Department and the members of this committee.

Senator QUAYLE. Thank you very much, Mr. Lovell. I appreciate your concern, and particularly from my perspective of mentioning the CETA reauthorization. As we have done privately, I will say so

publicly, and invite your active participation as we proceed to rewrite the CETA authorization next year.

We have had 4 days of hearings here in Washington and 2 days of hearings in my home State of Indiana. Senator Hawkins had a day of hearings in Florida. I am co-chairing some hearings in Vermont with Congressman Jeffords and Congressman Hawkins on the training issue.

We have informed the staff on both the minority and majority of our desire to proceed. We have had input from the private sector and the public sector, and with your background and insight we certainly welcome you as a good addition as we try to come up with a viable working program that will meet the compatible philosophical objectives that we all share. Therefore, I am particularly pleased that you mentioned that.

I really do not have any particular questions. From my point of view and I think probably the point of view of those on the committee, the nomination is not one of controversy but one of great respect, and it certainly warrants the support of this committee. The President should be commended for his choice in placing his confidence in you. I am sure you will not let him down; I am sure you will not let the members of this committee down.

If other Senators were here—and I will yield in just a moment to the distinguished Senator from West Virginia, Senator Randolph—they would likewise request and seek a good working relationship with you personally and with the Department of Labor. I think that is probably paramount on many of our minds, just developing a good spirit, a good feeling as we work on some very tough issues, not only the training issues but other people have different issues. I have my own particular issue that I am concerned about.

I think I would probably speak for most of them that we hope for, expect, and I am sure that we will receive the cooperation that has been indicated in your personal meetings with Members of the Senate recently.

There will be some written questions submitted from, I believe, both the Republican and the Democratic Senators to you for response.

Mr. LOVELL. That will be fine.

Senator QUAYLE. Senator Randolph?

Senator RANDOLPH. Good morning, Chairman Quayle.

Senator QUAYLE. Go ahead and proceed.

Senator RANDOLPH. I wanted to ask a question or two, and the staff will provide us with the answer or answers. I am not certain but I believe we cannot even hear a nomination without there being a member of both parties at this table. Is that correct? Who is able to speak for the staff? No one?

Well, I think we had better because I am going to ask a further question. In the Environment and Public Works Committee we have to have a member from both the majority and minority parties. I am only saying that is what we have. That is why I came this morning.

Mr. LOVELL. I am awfully glad you came, Senator.

Senator QUAYLE. I am, too, since you point that out. I would have to check what our rules——

Senator RANDOLPH. Well, who is the counsel for the committee?

Senator QUAYLE. Ours would be right here, George Pritts. That is not necessarily——

Senator RANDOLPH. Did you hear the question?

Mr. PRITTS. Yes, Senator.

Senator RANDOLPH. What is the response, please?

Mr. PRITTS. It is not in the Senate Labor Committee rules that it requires two——

Senator RANDOLPH. I see. I just wanted to make sure. What is the rule——

Senator QUAYLE. The response should be noted that in the Senate Labor Committee rules it is not in the committee rules to have two——

Senator RANDOLPH. What is the response for voting procedure? How many members must be present?

Senator QUAYLE. Well, Senator Randolph, I think——

Senator RANDOLPH. Just a moment.

Senator QUAYLE. Are you going to ask the staff?

Senator RANDOLPH. I want to inquire further. Would you come, please, and respond?

I want to know what the procedure is within the committee for the reporting of a nomination. How many members must participate?

Mr. PRITTS. They poll all members, Senator.

Senator RANDOLPH. Well, you do not poll them. That is something that has to be decided, whether you poll or not. I am not being contentious. I am trying to find out exactly what the procedure is within the committee.

Senator QUAYLE. OK. Well, let me just say what I had intended to do and then you can do whatever you want to. That is certainly within your prerogative and I would respect the right of you as an individual and being a member of this panel.

What I had intended to do was to hold the hearings today on the nomination of Mr. Lovell. At the conclusion of the testimony and any questions that members had who were present, we were to submit written questions to him. I know both Republicans and Democrats have some written questions.

Then I was going to ask, without objection—and of course the Senator from West Virginia could object—that we would poll the committee on the nomination and try to expedite the nomination as quickly as possible. That is what I had intended to do, and that is what I will do at that certain time. If there is an objection or there are some problems then we can discuss it but for your information, that is what I had intended to do.

Senator RANDOLPH. You understand I am not trying to change the rules of the committee but we have rules of the committee and I want them established. That is all. In our Committee on Environment and Public Works and most committees, we cannot hear testimony of a witness—whether the Democrats were in the majority or the Republicans were in the majority—until we have at least one member present from both parties.

I had a very heavy schedule this morning, and yet I understood that there would be no member of the Democratic Party present for the nomination, and I wanted to come down to see that that was complied with. I am not causing any problems here. I am only

attempting to stay within rules that might get us into trouble later.

In most committees before we can even poll the members, we first have to have a decision of the majority of the members in the committee that you poll. That is not done automatically, and I am only attempting to—I am going to talk with the witness in a few moments—but I just wanted at the beginning to understand exactly where we are. What is the picture? I will ask——

Senator QUAYLE. Would the Senator yield?

Senator RANDOLPH. Yes, surely.

Senator QUAYLE. Let me just read rule 5. It says: "With the approval of the chairman of the subcommittee, one member thereof may conduct public hearings other than taking sworn testimony." We do have the approval of the chairman of the committee. We have announced that there were going to be hearings on the nomination.

You are right. We could not proceed without unanimous consent to poll the delegation. That is why I said at the conclusion of this testimony I will ask unanimous consent. You will be perfectly within the rules to object to that unanimous consent request.

Senator RANDOLPH. I will not object. I will not object.

Senator QUAYLE. No, but you can. You can do it or not but as far as any violation of the rules, I would just point out that we do have the approval of the committee chairman, we are having a public hearing, and that it would take unanimous consent to proceed with any kind of polling of this committee. At that time any Senator could say we go back to the regular rules. A lot of times in the Senate I have found it much different than the House of Representatives. It operates on unanimous consent, and that would be the precedent that I would apply.

Senator RANDOLPH. Well, Mr. Chairman, there is no member of the present minority of this committee who is more cooperative than the Senator now speaking. I have done that through all the years of my membership in this committee, as can be attested to.

My question was simply to lay down the ground rules so that we might understand exactly what was happening. I personally feel that it is wrong to have a hearing on a nomination, a very important position within the Labor Department, with one member present of either party whichever party that may be. I feel that both the Republican and Democratic parties should be present through at least one member during a hearing of this kind.

That is the position that I have taken through the years and I simply wanted to restate it here today. I am not being facetious but perhaps we have been too serious already.

You heard the President's speech last night?

Mr. LOVELL. Yes, sir.

Senator RANDOLPH. He proposes abolishing the Department of Energy and the Department of Education. Do you have any qualms about the possibility of your job being abolished with perhaps a request for the abolition of the Labor Department?

Mr. LOVELL. No. I do not think, Senator, that that is even under consideration.

Senator RANDOLPH. I see. [Laughter.]

Well, these come to hit us, you know, as we heard them last night, and in all good humor I am just asking the question.

I have not had the opportunity to read your statement and I have acted rather hurriedly in looking over the completion of your Presidential nomination dossier.

What are the exact duties, as you see them, as Under Secretary of Labor?

Mr. LOVELL. Well, the Under Secretary in the Labor Department is the No. 2 man in the Department, charged with the responsibility of managing the affairs of the Department. Duties do vary from Secretary to Secretary and from Under Secretary to Under Secretary.

I think the understanding that Secretary Donovan and I have is that he would want me to play an active role in the formulation of policy decisions regarding legislation, regarding regulation, and other policy judgments made by the Department; to have a process by which the options are presented to him in an organized form so that he can make the ultimate decisions. I think he would expect me—I think he does expect me to work closely with the members of this committee and with the Congress to establish the best relationships we can, to share our thoughts and concerns with you and other members of the committee. That is a task I embark on with some enthusiasm.

I think he would expect me to work cooperatively with other groups such as organized labor to see if we can build the kinds of bridges and relationships that the Department of Labor needs with that important segment of American society, but I think my principal duties would be internal, regarding the management of the Department under his leadership.

Senator RANDOLPH. Well, thank you. I look upon the Department of Labor as one of the departments that is very important in the conduct of Government. I think that you would want us to give very careful attention to your background so that we have the knowledge of how possibly, with your statement, you would move in certain directions.

I have asked this question of every nominee that has ever appeared before this committee to become a Secretary of Labor. I will ask it of you, Mr. Lovell, this morning: Do you believe that public employees have the right to strike?

Mr. LOVELL. No. I think——

Senator RANDOLPH. Sir?

Mr. LOVELL. Are you talking about Federal public employees?

Senator RANDOLPH. I am talking about public employees in the Federal Government, and that is all you are charged with.

Mr. LOVELL. Yes. No, sir. No, I do not.

Senator RANDOLPH. Do you wish to enlarge on that in any way? Do you have any suggestions about arbitration, coming for a settlement after negotiations have taken place?

Mr. LOVELL. I think that Federal employees have a number of opportunities that in most instances are unusual, in terms of generally a long continuity of service, quite stringent civil service protections. At least in the middle echelons of Federal service people are generally well paid. This is not quite so true of the higher civil service levels today. However, they enjoy a number of

opportunities and privileges by being Federal employees. I think it is just contrary to the interests of the Republic to have them strike.

I think when you look over the large number of Federal employees that have served this country, that I would be skeptical of getting into an arbitration procedure that would remove from the President and from his key Cabinet officers by an arbitration procedure, rights to make the judgments concerning the operation of their departments, other than those that we have now protecting the grievance rights of these employees. Therefore, I guess in simple form I do not think I would favor arbitration beyond that that we now have.

Senator, good morning.

The CHAIRMAN. Good morning, Mr. Under Secretary

Senator RANDOLPH. Is that the conclusion of your comment?

Mr. LOVELL. Unless you want to——

Senator RANDOLPH. Well, I still have some other questions.

Mr. Chairman, Senator Quayle had started our meeting, which is altogether proper, and I was simply asking earlier today in your absence about the rules of the hearing of nominations and the reporting of them, simply procedural questions that I wanted to ask.

The CHAIRMAN. I hope that the Senator from West Virginia is happy with the way we are proceeding here.

Senator RANDOLPH. I said that I had no argument.

The CHAIRMAN. Oh, yes; but I just wanted to make sure.

Senator RANDOLPH. No, no. If that seemed to be the case, it is not the case but I feel very strongly regardless. I have always voted within this committee or any committee on which I was a member, that when there was a nomination being considered within the jurisdiction, whatever it might be, that there should be both a majority and a minority member present. I have taken that position in every committee. I feel that that is very important. It saves you problems that might arise later, and that is why I was asking the question.

The CHAIRMAN. We are very grateful to have you here, and I am sure you are also, Mr. Lovell.

Mr. LOVELL. I certainly am.

The CHAIRMAN. Senator Randolph is not only a prestigious member of this committee but of course is one of the most powerful people in this whole body, and rightly so because he has been here so long that he understands more than all of the rest of us put together. However, he is also a dear friend, and I just want to compliment him for being here so we do have bipartisan appearances at these hearings. I certainly appreciate my good colleague, Senator Quayle, chairing this in my absence but I wanted to be here for you today.

Thank you, Senator.

Senator RANDOLPH. Thank you.

I want to, since we are talking about this—and I am very grateful for your comment, although it is really overwhelming and you have no right to make it—but I simply wanted to say that my position now is what it has been during my tenure in this committee. I urged that Republicans be present—they were in the minor-

ity, when I was on the committee, for a long time—because I felt that this was a procedure that we should follow. I have never believed in the rules that we now have, that a nomination could be heard by one member—without both the majority and minority of whichever party might be in the majority or minority—because I think it is a very bad procedure. That is my own feeling.

I feel also that it is very important, as at least we have in some of our committees and in the committee I chaired on Environment and Public Works, we never have a vote in that committee until there is a sufficient number, whatever it is, who even though they do not sit through the hearing, they come to the hearing. They are recorded as being present. Otherwise we cannot vote on the many issues that are before us. I believe that is sound practice.

I just believe that the committee structure breaks down when we move too quickly on important matters, nominations, for example, important votes that are to be taken. I think it is in the interest of the Senate procedures that we not have the problems later saying, "Well, there was no consideration given," and then they go back and see that such-and-such happened within a few minutes. I do not think this nominee would want that. I do not believe that any nominee would want it.

Now to continue with the questioning about the feeling that you have on public employees within the Federal Government striking, I want to say to you that I agree with you. I do not believe that public employees within the Federal Government should strike, and I have said that from this table over a long period of years.

Now I ask you the next question: Do you believe that it is proper for Federal employees to organize themselves into unions?

Mr. LOVELL. Yes, sir.

Senator RANDOLPH. Will you explain why?

Mr. LOVELL. I think that the concept of the union is a valuable one both to the employees and to the employer. It establishes a method of communication in terms of resolving day-to-day problems which I think is useful and constructive. The trade union movement is an integral part of a democratic society and I think that to the extent the advantages of that can be shared by Federal employees in such a fashion that it does not violate the rights of the Federal Government, I think that they can be useful.

Senator RANDOLPH. Have you had any experience with union operation, either within the private or the public sector, that you would discuss with us?

Mr. LOVELL. Yes, sir, I have had quite a lot.

Senator RANDOLPH. Well, what has it been?

Mr. LOVELL. Well, I represented management principally most of my life, at the Ford Motor Co., at American Motors, and in my most recent experience I was responsible for coordinating the collective bargaining for the rubber industry so I have had quite a bit of experience. I was on the American Motors collective bargaining committee two times.

Certainly dealing with unions does not necessarily make the life of a member of management more pleasant during that occasion. I am just saying that the social benefits I think outweigh the discomfort of the moment during the negotiating process.

Senator RANDOLPH. Mr. Chairman, I agree that unions should be and are now operating within the Federal Government. I believe in that, so we have no difficulty on that.

We go back to the original question, the unions within the Government: Now how will we keep the Federal Government workers from striking? How can those unions that you talk about, that I believe in, how can they keep from the so-called weapon of the strike which I do not believe they should have?

Mr. LOVELL. Well, I think one of the greatest challenges of any institution, Senator, is the judicious use of power. When power is abused it is generally lost. I think the ability of unions to work within the Federal establishment will require a discipline on their part and a constructive attitude on the part of the Federal management, so that the ultimate power which other unions have is not used and, therefore, that the unions do not abuse their rights to represent Federal workers.

The constructive use of power is a very difficult and a very challenging situation in any institution. During my experience, I think one of the more difficult things is, when do you use your power to your fullest and when do you stand back in an effort to reach more mutual understandings, compromise, and work constructively with other points of view? I am sure you realize, with your many distinguished years in this body, I am sure you have taken both points of view at times: You have held firm to some positions and you have compromised on others.

Senator RANDOLPH. Mr. Lovell, we have talked about Federal employees and the unions within the Federal Government, and on both of these matters you and I are in agreement. I ask you now to move from the Federal sector. Because of the Labor Department's programing throughout the Nation, the Labor Department is constantly a part of State decisions that go on all over this country. Would you say that public employees, regardless of the political subdivision level, should not strike? State employees, for example? Would you discuss that?

Mr. LOVELL. Well, in my work at Michigan when I was chairman of the State Labor Mediation Board and a labor adviser to the Governor, I opposed the right of State employees to strike. I did favor their right to organize. As a matter of fact, I was influential in achieving a bill giving public employees the right to bargain collectively but I recommended very strongly, and this point prevailed, that they not be given the right to strike.

Senator RANDOLPH. Well, I thank you for your testimony. It has been very straightforward on this subject matter.

This committee, of course, has been the committee of jurisdiction on these matters that we are discussing for a long, long time. I was a Member of the House of Representatives and the Labor Committee there in 1935 when we passed the National Labor Relations Act which gave to American workers their first opportunity to bargain collectively; that meant unions bargaining with private industry. What would be your assessment of the success of that legislation.

Mr. LOVELL. Oh, I think it has been remarkably successful, not without its trials and tribulations but I think it has added considerably to the social safety of the Republic. I think it has been fine legislation.

Senator RANDOLPH. Not only a recognition of labor but also giving to labor a great responsibility; is that what you are saying?

Mr. LOVELL. Yes, sir.

Senator RANDOLPH. In Poland today, 1981, we have the people there fighting, let's say, violence perhaps prevalent because they are now trying to do what, Mr. Chairman, we did in 1935. Is that correct?

Mr. LOVELL. I am not sure I understand your question, Senator.

Senator RANDOLPH. Well, I said that in Poland today——

Mr. LOVELL. Oh, in Poland. I am sorry. Yes, yes.

Senator RANDOLPH. Yes.

Mr. LOVELL. Well, of course the Polish people are—and I know nothing about it except what I read but clearly the labor movement in Poland—perhaps it would be inappropriate for me to say this because I do not want to get them in any trouble, not that I would get them in any trouble—but let me put it this way: At least from my point of view, their activities constitute a breath of fresh air.

Senator RANDOLPH. Well, what I am trying to point out, all over the world workers are trying to do now what we did in this country in 1935. That is where I am getting to the point.

Mr. LOVELL. Yes, sir.

Senator RANDOLPH. Now during the period since 1935 to 1981, with certain revisions within the law, has this law been helpful to the American people as the American people, through so-called management and labor, continue to develop the economy and which has been a relatively strong economy?

Mr. LOVELL. Well, it has been very helpful, Senator. As you look down the road for the next 20 years, American management and American labor are going to be required, if we are going to compete in this world, to work even more cooperatively together to achieve greater productivity and to place this Nation economically on the pinnacle where it belongs. I think the laws we have had have been tremendously helpful and will continue to be helpful over time.

Senator RANDOLPH. You may not want to discuss this—and then I am through—but I was very disappointed that the Secretary of Labor would not—and the record is documented on this matter. I supported his nomination, as you remember, in this committee, so it is not any harping criticism that I bring to him.

However, I was very disappointed that in our crippling coal strike in this country that we did not use the Mediation and Conciliation Service as it should have been used. That legislation is on the books; the agency is there. It is an agency not to take sides but to counsel with both sides in an effort sometimes to, let's say, bring out a point, stress a view, and be a helper as a third party. Although a difficult third-party job, it is often done.

Now it was my plea to him that that agency be used but for 51 days the strike had been in progress, a strike that lasted for more than 75 days, a crippling strike. Now just how crippling was the strike? Not only did it flatten the economy of the Nation but particularly those coal-producing States. It cost, Mr. Chairman, the State of West Virginia in direct payments from the coal that is mined in our State, that goes by a certain percentage figure into

the State treasury, it caused us to lose $42 million. Well, that is a heavy blow to a State, and so that is the reason I am saying today—I have spoken to the Secretary just as I am speaking to you but I want to reaffirm what I have said to him—that I felt that that strike might have been lessened in the number of days and its impact had we used an agency of the Federal Government, the Mediation and Conciliation Service. Are you familiar with that service and what it does?

Mr. LOVELL. I certainly am, Senator. As a matter of fact, the Mediation and Conciliation Service is available in a strike situation and in a prestrike situation. It is up to the parties to ask for them to come in.

Senator RANDOLPH. I understand you cannot do it without both parties asking. I know that.

Mr. LOVELL. All they have to do is to ask, and the Service is more than willing to come in. That really is the appropriate place for mediation to take place in almost every instance.

Senator RANDOLPH. Yes. However, you will remember that the Secretary of Labor had no problem with going into the baseball strike and he did that within 20 days.

Mr. LOVELL. Well, let me comment on that.

Senator RANDOLPH. Yes, I would like for you to.

Mr. LOVELL. I think it is a misunderstood point. The coal strike was an important economic strike affecting the economy of the Nation. It was the Secretary's view—and I think it is the administration's view, and I certainly would support that—that the Government should not try to influence the outcome of that strike on either side, that that is the responsibility of the parties, it is the responsibility of the collective bargaining system.

Interference on the part of the Secretary of Labor in that kind of dispute would be inappropriate. Now the Mediation Service, yes, but for the Secretary of Labor to come in and lean on one side or the other to end a strike prior to the time that the strike had carried out its economic role of helping the parties decide, I think would have been wrong, even though we did pay some cost as one always does in a strike.

Now the baseball strike is quite different. The Secretary went in there purely in a mediation capacity. It really did not affect the economy of the country.

Senator RANDOLPH. Oh, yes, it does affect the economy of the country.

Mr. LOVELL. However, not to the extent that coal does.

Senator RANDOLPH. Well, I agree with you, certainly. That is the point I made.

Mr. LOVELL. I think that he came in at the request of the Mediation and Conciliation Service. I think he served well. He has been complimented for his help as a mediator, not as a Government intervenor. I think that is a nice distinction but it is an important one. I think in this administration you will not find the Secretary of Labor or myself or other members of the administration coming into a strike situation and saying, "You should end the strike. You should limit the amount of wages given," or you should make any judgments within the collective bargaining context. We are not going to be doing that. That is up to the parties. The

parties are going to have to live with the decision. The industries are going to have to live with the consequences of the decisions they make in the collective bargaining process and we do not think the Government should interfere. Mediation, yes; interference, no.

Senator RANDOLPH. Well, that was all I was asking for.

Mr. LOVELL. Yes, sir.

Senator RANDOLPH. I so stated here at the beginning.

Mr. LOVELL. Yes.

Senator RANDOLPH. In one it took place; in the other it did not.

Mr. LOVELL. Yes.

Senator RANDOLPH. I am not attempting to say the issues; I am not taking sides. I started out by speaking of the Mediation and Conciliation Service. I think the Secretary of Labor, by whatever name and party, he has a very real responsibility to assess the damage being done by a shutdown or stoppage or strike. He has it in a crippling coal industry strike; yes, he may have it in the baseball strike. He failed, as I see it, to come forward in the crippling coal strike but he came forward very quickly in the baseball strike.

Now that is all I am saying I have said it to him. I want the record simply to reflect it as to what your feeling is about it today. You have supported the President and that is proper for you to do it. In fact, it would be proper for you to disagree with him sometimes, you know. We understand that to be a possibility.

Mr. Chairman, I shall support the reporting of the nomination of Mr. Lovell from this committee to the Senate. Again, I want to say that what I said at the very beginning, I am sorry if it was misunderstood. I simply was trying to show once again, when a nominee for a very important position in the Federal Government—and I consider this an important position in the structure of our Government—that when that nominee sits before us I think it is highly important, and frankly I have tried over and over again to have our rules changed. I think that both parties, minority and majority, should be here when a nomination of this kind takes place.

The CHAIRMAN. I could not agree more.

Senator RANDOLPH. That was my intention. When I found that there was no member here, I changed other appointments and came down this morning, especially when I found that we were going at 9:45 instead of 9:30. Therefore, I am here in the interest of this committee, the stature of the committee and the record of the committee, as the chairman well knows.

The CHAIRMAN. Well, I really appreciate that, Senator Randolph. I think you make a very good point. On an appointment such as this which is really important, I think one of the most important appointments we could have in Government today, that we have members of both the majority and minority here. Therefore, I particularly welcome you here today.

It is characteristic of Senator Randolph to support nominees of the President, and I knew that he would be supporting your nomination—and I personally appreciate that because I support your nomination as well—unless there is some overriding concern that would require him not to support. But I very seldom see that

unless it is somebody who should not have sat in the position to begin with.

You did make a very interesting distinction, though, in your BNA remarks that were reported with regard to mediation. I think you have made that here today. Speaking of you, it said:

> He makes a sharp distinction between situations where the Federal mediator is trying "to help clear the channels of communication between the parties, trying to create a better understanding, or trying to reduce the chances of one party taking advantage of the other," and the quite separate situations where the mediator makes judgments on economic or national interest merits of the various proposals before the negotiators. The mediator should shun any peddling of national economic policy or other theories of the economic merits, according to Lovell.

I think that is a fairly good recitation of your viewpoint on that issue, which coincides with what you told our distinguished friend from West Virginia here this morning.

I am pleased to have you appear before our committee, Mr. Lovell. You have had tremendous experience in the field of labor relations, and I think that stands you in good stead. You have worked in a highly regulated and highly unionized field, and that is something that will stand you in good stead as you work in this Department and help Secretary Donovan.

You know Secretary Donovan; you have respect for him; you understand his goals and the objectives in his administration. You are familiar with the Department; you have worked in the Department before. You have held high-level positions before and you, of course, have met most of the Department of Labor personnel. You have been involved, of course, in the transition of the Reagan administration into the leadership of Government, et cetera. I respect that and I think all of those experiences will help you in fulfilling this particular nomination and experience well.

I want to ask some questions that other Senators have submitted to me. There will be some questions that we will submit in writing. I have some right here. We will keep the record open for a few days, probably until Monday or Tuesday, to allow any Senator on the committee to submit written questions to you which we would hope you would answer in a day or so after you receive them.

Mr. LOVELL. Yes, sir.

The CHAIRMAN. Now I am going to ask a number of questions that are not particularly mine. Some are mine; some are questions of other Senators that I have agreed to ask. All I want to get is the best response I can, to the best of your ability.

Now you agree, don't you, that the Department of Labor's investigation of and attempts to clean up the Central States pension fund conducted during the Carter administration were basically poorly done, and may have been poorly done even before?

Mr. LOVELL. I certainly agree that prior to this administration coming into office, that the conduct from the records that I have read would raise some questions in terms of the thoroughness and perhaps even the enthusiasm with which it was conducted.

The CHAIRMAN. Well, you know, don't you, that the Labor Department assured Congress that it would coordinate its SIS investigation of the Teamsters fund with the Department of Justice and, frankly, it did not. You are aware of that?

Mr. LOVELL. Certainly all of the activities going on today in the Labor Department, as I understand it, are being coordinated with the Department of Justice.

The CHAIRMAN. However, they were not before.

Mr. LOVELL. I just do not know.

The CHAIRMAN. You do not know.

As a result of that, neither the efforts of the Department of Justice nor the efforts of the Department of Labor in my opinion were as effective as they could have been. We are getting that information from the oversight inquiry of the Department of Labor's investigation of the Teamster Central States pension fund.

Now also it has been claimed that the Department of Labor refused to allow its investigators to investigate third party transactions, that is, transactions between the fund and certain persons and entities who had suspicious ties to organized crime or who had received large loans for questionable purposes. Are you aware of that?

Mr. LOVELL. At what time was this refusal made?

The CHAIRMAN. This was during the Carter administration.

Mr. LOVELL. I understand that to be true, sir.

The CHAIRMAN. They also found, at page 166, that the Special Investigative Staff [SIS] within the Department and the Solicitor's Office became embroiled in bureaucratic infighting, reducing the effectiveness of the SIS investigation. Are you aware of that?

Mr. LOVELL. That also is my understanding.

The CHAIRMAN. They also found that the Department of Labor failed to obtain any enforceable agreement with the fund concerning reforms insisted on by the Department of Labor. Are you aware of that as well?

Mr. LOVELL. Yes, sir.

The CHAIRMAN. These are serious allegations. On page 167, in short, I would have to say it is true, isn't it, that the Department of Labor's focus was too narrow and that basically doomed, at least up until now, the investigation of the Central States pension fund?

Mr. LOVELL. Yes, sir.

The CHAIRMAN. Don't you agree with the statement found on page 167 of the report of the Permanent Subcommittee on Investigations, dealing with the Labor Department's investigation of the Central States pension fund: "The Department of Labor failed to provide for long-term reform and protection of the pension fund. The Labor Department's approach brought temporary relief without treating the underlying illness. It was a band-aid on a major wound." Are you aware of that?

Mr. LOVELL. That would be my judgment, Senator.

The CHAIRMAN. You would agree with that, then?

Mr. LOVELL. I would agree with that.

The CHAIRMAN. You agree, don't you, that the statement I just read is all too frequently indicative of the Department's overall approach to investigations in the elimination of union corruption. Is that correct?

Mr. LOVELL. That is my understanding of what the situation has been prior to our coming into office.

The CHAIRMAN. Well, these things are serious to me, and it is not just the Central States pension fund. There are four major unions

in America related to major businesses in America, against whom very serious allegations of corruption and racketeering have been lodged. During the lifetime of this committee, I know of very little investigation into those particular areas. I am just saying we are getting into those areas, and I would hope that the Department of Labor will be totally cooperative with this committee in getting into these matters so that we can get this ball rolling and solve some of the problems that really are hurting workers all over America.

Mr. LOVELL. Senator, let me assure you that to the maximum degree of my ability, I will make sure that we cooperate with you in this effort. I think it is a highly worthwhile one.

The CHAIRMAN. We appreciate it. I am hopeful that that cooperation will extend to civil matters, and even in criminal matters to the extent that we are not dealing with privileged or otherwise court-ruled exemptions to our investigations.

Mr. LOVELL. To some degree—not being a lawyer, or even if I were—I would have to bow to the Solicitor in terms of what is appropriate in terms of suits that are currently underway. However, I think philosophically I would certainly agree with you.

The CHAIRMAN. We hope we will have a lot of cooperation, especially on the civil side and certainly since that case is a civil suit, even though there are all kinds of criminal allegations floating around that particular case, and I might add other cases as well for the other three unions.

Let me just give you some facts: Since 1975, the Labor-Management Standards Enforcement staff of the agency charged with the responsibility of investigating union misconduct has been reduced approximately 40 percent, while complaints against unions have substantially increased and, I might add, complaints against some businesses dealing with unions. It is not just unions. It is not just union leaders, and really it is not unions, it is certain leaders in certain unions more than it is the unions. I find no fault with the unions.

Second, the Senate Permanent Subcommittee on Investigations in its report of September 30, 1978, recognized the Department's inadequate staffing to carry out the task of investigating union corruption. You are aware of both of those statements——

Mr. LOVELL. Yes, sir.

The CHAIRMAN. The 40-percent reduction, and the inadequate staff to carry out investigations of union corruption? I should say business/union corruption because it takes two to tango in these areas.

Another fact, Assistant Attorney General Rooney in a letter dated June 18, 1979 agreed with the Senate Permanent Investigations staff that these allegations are correct, and you are agreeing here today as well.

Mr. LOVELL. It is my understanding, Senator.

The CHAIRMAN. OK. The Solicitor's Office of the Department of Labor has allocated a staff of only 20 lawyers to evaluate and prosecute ERISA violations for the entire Nation. Now that is a complex area. I do not see how 20 lawyers can possibly even make a dent in the ERISA violations in this Nation when, at the same time, a pension plan like the Teamsters can marshal more than

that many lawyers in just one case of the many cases being prosecuted by the Department of Labor.

We have to solve that problem. If it means more appropriations from the Congress to get to the bottom of these problems so you can hire more legal personnel, I am for helping you to do that. I just want you to know that.

There are so few Labor Department auditors that the odds of being investigated are considered to be so small that either a business or a union or both might be audited only once in more than 15 years, or perhaps never. You are aware of that?

Mr. LOVELL. I am, Senator.

The CHAIRMAN. That is a serious problem, isn't it?

Mr. LOVELL. I think it is a serious problem and it is one that we are trying to address in a very difficult time to address problems like this because of the staffing problems.

The CHAIRMAN. Well, let's work together on that and see what we can do to beef that up.

Do you have any remedies in being right now to help to solve those problems? Now you are not even confirmed yet but I know you are working very hard down at the Department.

Mr. LOVELL. No, I really could not say I have any immediate remedies, and particularly with the 12 percent cut that we are being faced with in the Department, any remedies that I might have had a week ago might not apply today, Senator.

The CHAIRMAN. I see. Well, we will have to work on that because these are areas that just must have more help. Even if you have to transfer from some less important areas into these areas, I would like to see that done.

In the August 31, 1981 Business Week it stated that:

> Despite cutbacks elsewhere in his Department, Labor Secretary Raymond J. Donovan is seeking more money and manpower for a new drive against union corruption. Donovan has approved a request to hire 151 additional accountants and criminal investigators specifically to audit books of the big unions.

I take it that is one of the things you were mentioning you would like to be able to do. I take it that statement is correct.

Mr. LOVELL. Yes, sir, I believe it is.

The CHAIRMAN. OK. Are you going to request resources for additional accountants and criminal investigators to augment the labor-management standards enforcement auditing capability?

Mr. LOVELL. Well, as I said, Senator, I think some of the commitments that we have made before in terms of how many people we hire will have to be reviewed again under the conditions we face today.

The CHAIRMAN. Well, I would think that you would want to go ahead and request these additional positions. If you have to take them from elsewhere within the Department, I would sure do that. This is of particular interest to this committee at this time and certainly will be over the next 3 years.

Mr. LOVELL. I understand that, Senator.

The CHAIRMAN. OK. The SPI report found that the interests of union members were not the Department of Labor's first concern. In fact, it stated, "By habit and tradition the Labor Department has not made a top priority the protection of the rights and bene-

fits of present and future beneficiaries." Are you aware of that statement?

Mr. LOVELL. Yes, sir.

The CHAIRMAN. Do you agree with that?

Mr. LOVELL. I understand it to be true.

The CHAIRMAN. Well, I think these programs and these statutes have been developed to protect the workers, not the leaders and not the unions per se but the workers themselves. I would like to see some changes made in that area and I think you are the person who can help to effectuate these changes. I am going to count on you to do that.

I am really going to count on you to beef up and get those 151 additional auditors and investigators to do the job that I think just has to be done. I do not see how you can do with less than that number in that particular area. Will you try?

Mr. LOVELL. We are going to do the best we can. We certainly agree on the priority, Senator.

The CHAIRMAN. I think it is time—and maybe I am just speaking here but sometimes chairmen do have some prerogatives—I think it is time that the Labor Department was more concerned with the welfare of individual workers than the welfare of labor unions and businesses and their respective leaders with such obvious political clout. I think we have to get into this and worry about the workers, and not worry so much about the political clout in the matter. I am going to help you if you will do what you are indicating you will do here today.

Mr. LOVELL. We are certainly going to do our best and we will work as closely with you as we can.

The CHAIRMAN. I think you would agree with me that it is about time that the Department of Labor became the first line of defense against fraud and abuse in employees' benefit plans and union operations.

Mr. LOVELL. Yes, sir, we clearly agree with you on that.

The CHAIRMAN. Isn't it true that by habit, tradition, and inclination the Labor Department has tended to avoid adversarial encounters with large labor unions and their big employee benefit plans?

Mr. LOVELL. I think in many instances this has been true.

The CHAIRMAN. I think we have to do what is right, and we have to be able to have those encounters—even though nobody likes confrontations or adversarial relationships—but in part that has to be part of the duty and obligation of this Department.

Mr. LOVELL. The Department is responsible to carry out the law, Senator, and the law in these instances is quite clear.

The CHAIRMAN. On page 186, the SPI Committee—Senate Permanent Investigations Committee—recommended that the new leadership of the Labor Department take steps to reverse those habits, traditions, and inclinations within the Department which have tended to lead the Department in the direction of avoiding adversarial encounters with big labor unions and their big employee benefit trusts. You have indicated you are willing to follow that admonition and take the counsel that they have suggested there.

Mr. LOVELL. Yes, sir.

The CHAIRMAN. Now what do you think you can do as Under Secretary of Labor? Perhaps it is time that we change the struc-

ture at the Department and get some Under Secretaries under a Deputy Secretary. I chatted with you about that, and you were not adverse to that.

Mr. LOVELL. No; we are in agreement.

The CHAIRMAN. I think it is about time we get some managerial changes that might help you to accomplish some of these things. What do you think you can do to follow that admonition of the SPI Committee?

Mr. LOVELL. Senator, I am not really prepared to go into great detail on it other than to agree philosophically that we must do it and we must work closely with you. I also agree that we have to give major priority in our resource allocation to these functions.

The CHAIRMAN. OK. Now there has arisen another problem that I want to go into. Another Senator has suggested I get into this with you while you are here—and that is the suspension-of-benefit regulations. The suspension-of-benefit regulations issued pursuant to ERISA have been delayed repeatedly by the previous and, I might add, this administration.

These regulations deal with suspending pensioners' benefits because they are engaged in work for remuneration. The heart of the proposed regulations provides that a person may work up to 40 hours per month and not lose his pension. Many plans have restrictions which cut off retired persons' benefits for up to 1 year for doing any kind of work.

Now as you are aware, the suspension-of-benefit regulations were delayed for a third time, although they are obviously consistent with administration policy and are supported vigorously by the Senate Special Committee on Aging, of which Mr. Heinz is the able chairman. According to Mr. Heinz' office, you were the person responsible for the most recent delay. Now isn't it true that the postponement was for technical rather than substantive reasons, and by your delay the Labor Department has sent a message to interested persons that the Labor Department is unable to make needed though unpopular decisions? This is a question that——

Mr. LOVELL. You are right. The delay was for technical reasons. The decision has been made to go ahead with the changes in the regulations, as you have indicated, and this will take place. Our attorneys have told us that it would be proper to publish these changes and to allow a proper time to go by to comply with the administrative——

The CHAIRMAN. How was that decision made? Whose input did you receive in that process?

Mr. LOVELL. Well, fundamentally the decision—the information was given by the Solicitor of Labor that in his judgment this course of action was the appropriate one for us to take to be on the soundest legal ground. It was on that basis that the Secretary and I decided to publish these regulations and to allow the 3-month period to elapse before they——

The CHAIRMAN. It was basically on that input from the Solicitor's Office, then?

Mr. LOVELL. Yes, sir.

The CHAIRMAN. Did everybody at the Department agree with this approach?

Mr. LOVELL. No, I do not think everybody did. No.

The CHAIRMAN. Do you agree with it?

Mr. LOVELL. Yes, I think I do agree with it, Senator.

The CHAIRMAN. Could I ask you, Why did you ultimately decide to postpone the effective date of the regulations?

Mr. LOVELL. Why did I what?

The CHAIRMAN. Why did you ultimately decide to postpone the effective date of the regulations?

Mr. LOVELL. Well, I think it was for the same reasons, on advice of the Solicitor.

The CHAIRMAN. Now as I understand it, you are committed today to having the regulations as now amended become effective at the earliest possible date.

Mr. LOVELL. Yes, sir.

The CHAIRMAN. OK. When can we expect those regulations to become effective?

Mr. LOVELL. I think, as I understand it, in 3 months.

The CHAIRMAN. Could it be shorter than that?

Mr. LOVELL. That is my understanding, Senator. Let me check, if you want to find out specifically, but that is my recollection.

The CHAIRMAN. If you could let us know, we would appreciate it.

Mr. LOVELL. Yes, I will.

The CHAIRMAN. What are you going to do personally to assure that they will become effective, at least within a 3-month period?

Mr. LOVELL. Well, I think I have already done all the things I need to do to make sure of that.

The CHAIRMAN. You are quite confident they will become effective at that time?

Mr. LOVELL. Yes, sir.

The CHAIRMAN. In your prior service with the Labor Department as Deputy Assistant Secretary and Manpower Administrator, you were actively involved in forcing quota systems to promote equal opportunity. Is that correct?

Mr. LOVELL. No, I do not think—I think what you are probably referring to was the instructions I gave to the Bureau of Apprenticeship and Training, which had been very, very slow indeed to being sensitive to the administration's policy of equal employment opportunity, to get off their rear end and start bringing in some minorities. I may have given them a target. I do not really recall. I read in the paper about it and I am sure it is true but I do not remember the specifics. I do remember telling Hugh Murphy that we had really waited long enough and I wanted him to start doing something soon.

The CHAIRMAN. I cannot blame you for that. Do you anticipate using any quota systems in DOL's EEO enforcement, including the OFCCP?

Mr. LOVELL. No.

The CHAIRMAN. I hope you do not because I personally am strongly for employing minorities and women—and I want to see that done and I want to see any voluntary or positive approaches that can be taken to accomplish that—but I personally do not think the Government should be in the process of discriminating based on only the race or sex of a person.

Senator RANDOLPH. May I interrupt you, Mr. Chairman?

The CHAIRMAN. Surely. Any time.

Senator RANDOLPH. I have taken the position of our able chairman in this matter. It is not a new position for me. I think quotas are a very unsatisfactory way to attempt to do anything within any sector of our living, whether it is private industry or the operation of Federal agencies.

The CHAIRMAN. So do I.

Senator RANDOLPH. The thought of quotas is, yes, we are doing it for a certain reason, and that is to bring equity, but it is not a practical way to have equity brought into being. We do want, as I want, more women within the employement structure. Certainly we do. We want more people regardless of their heritage or history or background. We want them, insofar as possible, to move into the positions that we have. However, to have what I call the rigid structure of quotas, it really is not practical and I just want to agree with you.

The CHAIRMAN. Well, you and I agree on that. Thank you, Senator Randolph. Any time you would care to interrupt and ask any questions, you feel free to do so. I just want to get through this line of questions that I have been obligated to ask.

Then you do not anticipate utilizing any quota system in DOL EEOC, including the OFCCP rules and regulations?

Mr. LOVELL. I certainly do not contemplate that. As you know, we have published some regulations for comment. We are looking over the whole situation. We are listening to what people are saying in terms of what we publish.

The CHAIRMAN. Are you listening to this committee, because we are holding some very effective——

Mr. LOVELL. No, no, we are well aware of that.

The CHAIRMAN. You know, I made the comment that I thought they should hold off on their regulations until this committee has completed its hearing process, and they went right ahead and submitted them. I also made the comment that all we are going to do is succeed in making both sides mad, and that is exactly what has happened.

Mr. LOVELL. Well, that seems to be an easy thing to do these days, Senator. We have our share of that.

I think philosophically I want to make it clear that I am as strong a believer in equal employment opportunity as anyone, certainly anyone in the past administration. I think what we are questioning are the methods by which those goals were achieved or attempted to be achieved.

I have used the example, if an army is crossing a river they often will build a bridge to cross over. Then if they have a mountain following that, they do not need to use the same technique. A bridge is not necessarily the best way to get over a mountain. They may want to make a tunnel, or they may want to go around it, or they may want to do something else.

I think that the problems we face today, 15 years after this country took on the major assignment of achieving equal employment opportunity, we have to look at new tools. I do not think we want to abandon the goal. I think we have to look at what is the best and most effective and most constructive way of getting there.

The CHAIRMAN. I think so. Do you believe in the use of racial quotas, then? I take it that you do not but you do believe in voluntary and——

Mr. LOVELL. I believe in the goals very heartily, and we are trying to look in an imaginative, constructive way as to what the best tools are to get there in this decade.

The CHAIRMAN. Therefore, you think that the current OFCCP regulations as amended by the Labor Department go far enough to alleviate the burdens imposed upon the productive sector of our economy.

Mr. LOVELL. Well, we really are still looking at that, Senator, and I guess the fact that we are still looking at it would suggest that we are not necessarily confident that we have the absolute answer at this time.

The CHAIRMAN. We are finding, as a result of the initial hearings we have held in the Judiciary Committee on the equal protection amendment which were for the purpose of creating debate on the issue of affirmative action and the EEOC–OFCCP program, and as a result of the first couple of hearings we have held in this committee, that people all over this country—businessmen, police departments, colleges, banks—people all over this country are just up in arms. They are so sick and tired of what really amounts to Government-mandated discrimination based on race or sex only that they are just starting to come in here in droves.

I think it is a problem we have to address, and yet I share your concern. We have to come up with a system that provides opportunities for the 47-percent young blacks who do not have a chance, and for other minorities, and certainly for women too. I do not know the answer but we are going to come to some resolution of that one way or the other by creating the debate, and getting the best minds in this country working on it.

Mr. LOVELL. I think that is constructive. I do not know the answer either. I do not think we want to send a message out that discrimination now is back in style. On the other hand, I think we do have to proceed in a different fashion than we have in the past.

The CHAIRMAN. Well, I agree with you on that. Now do you agree that under prior administrations the OFCCP has unnecessarily harassed businessmen?

Mr. LOVELL. It has been very adversarial.

The CHAIRMAN. It has been awful.

Mr. LOVELL. Yes.

The CHAIRMAN. Frankly, I am not going to put up with it as long as I am a Senator. I think it is like OSHA. If we can get it to be voluntary and we can get it to be a cooperative venture between labor, management, and the bureaucrat regulators, everybody is going to be happier with it because we will have higher productivity, safer workplaces, and perhaps a better economical approach to it than we have today with the adversarial approach, "Let's cite everybody time after time after time for little picayune reasons."

Mr. LOVELL. I completely agree with you.

The CHAIRMAN. It came to my attention that during one of the major unionizing efforts in the shipbuilding industry during the last administration, certain union leaders came here to the Secretary of Labor and said, "We want OSHA to come down on this

outfit with everything it can." They issued within the next number of weeks $750,000 worth of fines and citations in a very close collective-bargaining process and unionizing election process, which many believe stacked it in favor of the unionizing election process.

I do not think that that should happen, either way. I think we should let that organizing process go fully and fairly. As you know, the law protects unionizing, and it is much more solicitous and protective of the unionizing effort than perhaps employers would like. I do not think that there should be any stacking of the laws to aid any unionizing effort nor to dissuade any unionizing effort.

Mr. LOVELL. I agree.

The CHAIRMAN. However, you are aware of what I am talking about?

Mr. LOVELL. I have heard that allegation.

The CHAIRMAN. Will you check into it?

Mr. LOVELL. Yes, sir.

The CHAIRMAN. I think that is something——

Mr. LOVELL. That certainly did not happen in this administration.

The CHAIRMAN. No. That happened in the prior administration. It is a serious allegation and I would like you to check into it and report back to the committee. It is a serious problem.

Mr. LOVELL. I will.

Senator RANDOLPH. Well, Mr. Chairman, in all good humor, you have not been in too long. Let's not get too excited about some of the problems you may face, you know.

The CHAIRMAN. Well, I have always been excited about them because this committee is an excitable committee but I agree. That is just one of the problems that I do not think should exist, either way.

Mr. LOVELL. I agree.

The CHAIRMAN. Now, since being heavily involved in the rubber industry, do you think that the national labor policy and scheme of labor relations has had an adverse impact on the rubber industry itself?

Mr. LOVELL. National policy?

The CHAIRMAN. The national labor policy.

Mr. LOVELL. No, I do not think it has had an adverse effect.

The CHAIRMAN. Do you think any other policy has had an adverse impact on the rubber industry with regard to labor-management relations?

Mr. LOVELL. Well, I think the regulatory policies which have been followed over the past 4 years certainly hit the industry hard, and during a very difficult economic period did pose a serious burden. I do not know of any labor relations-related——

The CHAIRMAN. Well, let me throw an illustration out that maybe will help you there. For example, don't you think that if the rubber industry had greater freedom to subcontract and less restrictive work rules, that American tire manufacturers could be more competitive domestically and on the world market?

Mr. LOVELL. Well, that is a collective-bargaining judgment.

The CHAIRMAN. It is, but don't you think that is true?

Mr. LOVELL. If you are asking me whether we in the rubber industry always bargained well, heavens, no.

The CHAIRMAN. OK. Well, or almost any other industry, I guess you would have to say, too.

What type of labor relations policies should the Labor Department—maybe this is an unfair question but let me ask it anyway, and if you think it is unfair you do not have to answer it—what type of labor relations policies should the Labor Department promote to help the rubber, auto, and steel industries become more competitive in the world markets?

Mr. LOVELL. No, I do not think that is unfair. Really in a sense I think I may have answered it. I think the main thing we can do is to let them bargain their own fate. Take the auto industry, particularly: These are difficult times for them, and the management and the UAW are going to have to come to grips—and I think are—realistically with the nature of their problem, the competitive situation between this country and other countries, and reach a bargaining conclusion which is sensitive to those worldwide economic conditions.

For the Government to interfere I think would be very wrong. They have to live over time—irrespective of the Chrysler activity—they have to live with their own decisions. The Government cannot protect industries that are not competitive. The best thing we can do is to say, "It is up to you. Go to it and reach conclusions which in your judgment are going to best protect jobs as well as profits."

The CHAIRMAN. I cannot help but mention that a little over 3 years ago, in 1978, one of the top automotive manufacturer's chairman of the board came to me and he said, "You know, we have just ruined the automobile industry." I said, "Oh, what do you mean? That is the greatest industry in the world."

"Well," he said, "we have gotten ourselves to a point because we have given in so much on the collective bargaining process that we cannot even make management decisions without union approval," and he said, "I hate to tell you this, Senator, but we are going to have all kinds of serious difficulties in the automobile industry."

I thought, "Boy, what a crybaby," at that time. That was 3 years ago. I thought, "How could he make that statement? Why, there is nobody who can compete with our automobile industry anywhere in the world. I mean, they can come close but they cannot beat us."

Of course, as we have seen, his predictions have literally come true.

Mr. LOVELL. That is right.

The CHAIRMAN. I was appalled by what he said and did not believe it at the time but, as I have looked at it since, I realize that I think in many ways businesses are run by managers and not by the people who created those businesses. Managers have a tendency to want to keep that sea of tranquility tranquil. They just continually refuse to have firm collective bargaining relationships, and the system then becomes stacked in one way. In the end, everybody loses including the worker.

Mr. LOVELL. I have often thought that bonuses to the top executives of a major corporation should be voted payable 10 years from that day, if profits were better 10 years from then than they were then——

The CHAIRMAN. That would not be a bad idea.

Mr. LOVELL [continuing]. So that they would be rewarded not for what happens on a short-term basis but what happens on a long-term basis. With the new technology, the technological changes that are taking place in this country and the world, and the changing competitiveness not only of the developed world but in many of the underdeveloped countries—you know, in the Koreas and Taiwan and a number of the South American countries and Mexico—competition is going to be tough. Managers of corporations are going to have to look ahead a lot further than they have historically because their responsibility to the Nation, as well as to their workers and stockholders, is going to require that far-sighted behavior in my judgment.

The CHAIRMAN. I have been asked to ask these last two questions——

Senator RANDOLPH. Mr. Chairman, just on that point, your discussion about the dire prophecy which was given to you and your reluctance to accept it, and then of course it came, I think we must not overlook the fact that our automotive industry—although we have I am sure the finest engineering skills in the workplace in our own country—that there was a failure to understand that there was a need for a car that was smaller than the cars that were being made.

The CHAIRMAN. Yes. I do not blame the unions; I blame the management there.

Senator RANDOLPH. On and on and on—I do not want to go into it—but I think there was a failure to come to grips with reality.

Mr. LOVELL. It would have been easier for the automotive industry to make the decisions they ultimately did if we had deregulated the price of gasoline earlier.

The CHAIRMAN. No question about it. Second, it would have been a lot easier for them to make the decisions that they did if they had participated a little more strongly in the collective bargaining relationship than they did.

Mr. LOVELL. No question about it.

The CHAIRMAN. That is the point I am making.

Mr. LOVELL. Yes, and they know that.

The CHAIRMAN. Now these last two questions are by other Senators, and I think they are important questions.

They asked me to ask you, Don't you agree that the Labor Department represents all workers as well as union workers, in other words, in addition to union workers it represents every other worker in the country as well?

Mr. LOVELL. I would go further than that. I think it represents all citizens of the United States in carrying out the laws that we are charged to carry out.

The CHAIRMAN. Yes, and they point out that less than 25 percent, approximately 21 percent of the total nonagricultural work force is unionized, and asked me to ask this question: Don't you think that the Labor Department should pay as much if not more attention to the needs of those workers who comprise the 80 percent of the work force, as well as the union workers, where in the past it appears that the Labor Department has been more concerned with augmenting and supporting union workers than it has in being concerned about nonunion workers?

Mr. LOVELL. Well, I am always a little careful to answer questions that start, "Don't you agree," Senator.

The CHAIRMAN. Let me rephrase it.

Mr. LOVELL. Let me try to get at the heart of it. Clearly the Labor Department does have responsibilities to all workers, organized or not, in many of their activities, particularly in OSHA, in ERISA, in OMSHA, in LMSA, in Employment Standards. These are carrying out the laws that have been written by the Congress for all workers, all people who work in this country that are covered by those laws.

In other areas the Labor Department—and really not so much in the law—the Labor Department has historically been a bridge to organized labor in a communications vein, and I think that is useful. Organized labor plays an important role in a free society, irrespective of the government. I think that just as business plays a vital role and government needs to listen to the voice of organized business, we also need to listen to the voice of organized labor.

Now that does not mean you discriminate in favor of it or against it. I think as a Government institution, fair and equitable and even-handed treatment is called for, not in an adversarial way but representing all people, all citizens. Certainly I think that Secretary Donovan and I do hope to carry out our responsibility in that fashion.

Senator RANDOLPH. Can I make a quick comment? You go ahead.

The CHAIRMAN. No, let me just make this one statement.

I have no doubt in your desire to do that and in your competence to do that, and I support both you and Secretary Donovan, as you know, in helping you to do that.

Senator Randolph.

Senator RANDOLPH. Thank you, Mr. Chairman. I am interested and in a sense concerned, not by your discussion because I certainly believe what you are saying is very largely true. I do feel that we must remember always—and I am constantly renewing this feeling and asking people to understand—Mr. Chairman, we hear of a Federal grant, a State grant, and I tell the people back home, "Those are taxpayer grants."

They come from the Federal level or the State level but the only way those grants can be made for whatever program or programs, it is only when we are able to have people at work in this country who pay taxes into the Federal Government or the State government or other government structures. That is the only way government can exist; it is when people are at work and people are paying taxes.

No program, whether it is good or bad, or whether it needs to be moved up in priority or lessened, can operate without people at work. Government only operates when people are at work. We tend to forget that, and it is so important.

Mr. LOVELL. Senator, that is why the President——

Senator RANDOLPH. Don't keep anyone in the corridor. Bring them in and talk with them, counsel with them.

Mr. LOVELL. That is why, I think, the President sets tremendous emphasis on his economic recovery program. Unless we as a society are able to control our inflation and to move forward with a growing economy, we are not going to have the jobs and the kinds

of jobs the people of this country have every right to expect. We are a rich country, we are a vigorous country, and if there is ever a country in the world that can compete effectively, we are it. We just have to have the courage and the guts to lick this inflation problem and to move on. You are absolutely right. We need a strong economy.

The CHAIRMAN. I would agree with you.

Senator RANDOLPH. Mr. Chairman, I want to thank you for giving me the opportunity to be present here and participate. I must go now but I would want to say—and I speak only for myself, no one else in the minority—I will be in favor of the process of polling so that the nomination may move to the Senate.

The CHAIRMAN. Thank you so much.

Senator RANDOLPH. I again say that I think it is preferable always to have in nominations or even in votes on important matters, the maximum number of members who are able to come. That does not mean all members. If you sat, as we have in our Committee on Environment and Public Works, why, we can question people, we can discuss matters but members must either come and check in—and perhaps that is not too important—but it shows that what we are doing is a committee action. However, certainly the polling process is a committee action and in this instance I would want you to know that, insofar as I am concerned, we should not delay in any wise the reporting of the nominee. I would so vote.

The CHAIRMAN. I really appreciate that. If you could wait just one second, Senator Randolph, we are very appreciative that Senator Randolph representing the minority is here because I agree with him, it is almost a travesty if we do not have representatives from both the majority and minority in nominations as important as yours is. I consider it, as I said at the outset, one of the most important nominations in this country right now.

Without objection, then, we will poll this nomination, assuming that there are no further objections, and try and get this nomination through as quickly as we can so that he can fully function in this position.

What did you think, Senator Randolph, about my suggestion that perhaps what they need down there is to have a Deputy Secretary with maybe some other Under Secretaries below him? Mr. Lovell ultimately would reach the position where he is the Deputy, and that would give them a better management structure.

Senator RANDOLPH. I would not want to make a comment about it. I certainly feel we might even want to have a session to discuss these matters. Sometimes a Deputy, yes, is very important but I have seen Deputies that wanted to take over the duties of the Director. This has happened many times where they get into a constant battle, so I do think you have to have echelons, I really do. Certainly it is a subject that I would want to give thought to and maybe be favorable to it.

The CHAIRMAN. Wonderful.

Senator Williams wishes to apologize that he was unable to attend this hearing due to an unavoidable conflict in scheduling, so he is going to submit questions to you.

Mr. LOVELL. Fine.

The CHAIRMAN. If his staff members are here, I would request that those questions come in to you today, since we are going to try to poll you out and hopefully have your nomination confirmed some time in the early part of next week if we can.

Now I want to personally thank you for appearing before the committee and answering the questions as honestly and candidly as you have, and for the responses that you gave. We are looking forward to a really good, constructive working relationship with the Department of Labor, as you work with us.

My office is going to be totally open to you any time. I will even give you my unlisted home phone number but we will do everything in our power to cooperate with you and to help resolve some of these conflicts and difficulties that exist.

I think we have, on this committee, we have a pretty well-balanced committee and we are having a lot of cooperation between majority and minority members on many items. I think you will find that almost all of us will want to support you in the items that we have been discussing today.

Senator RANDOLPH. May I be facetious for a moment?

The CHAIRMAN. Sure.

Senator RANDOLPH. Mr. Lovell, you will be able to call me without my giving you my home number. It is listed.

Mr. LOVELL. So is mine, Senator. [Laughter.]

The CHAIRMAN. Well, mine may be unlisted but everybody knows what it is. I get calls from everybody. [Laughter.]

[Mr. Lovell's biography and responses to questions referred to follow:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: Lovell, Jr. (LAST) Malcolm (FIRST) Read (OTHER)

Position to which nominated: Under Secretary of Labor Date of nomination:

Date of birth: 1 (DAY) January (MONTH) 1921 (YEAR) Place of birth: Greenwich, Connecticut

Marital status: Married Full name of spouse: Celia Coghlan Lovell

Name and ages of children: Lucie Lovell 30 Caroline Lovell 22

Sara Lovell 27

Annette Lovell 25

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Greenwich High School	1934-35		
Lawrenceville School	1935-39	Diploma	1939
Brown University	1939-42		
Harvard University	1942-43	I.A.	1943
Harvard University	1946	M.B.A.	1946

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Secretary of the Navy's Letter of Citation

Hung Hua Decoration, Nationalist Chinese Government

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Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
List attached - Pages 2-A, 2-B		

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Various managerial positions in personnel and industrial relations field, Ford Motor Company, Detroit, Michigan, 1946-58;

Manager of Employee Services, American Motors, Detroit, Michigan, 1958-61;

Assistant Campaign Manager, Romney for Governor, 1961-62;

Chairman, State Labor Mediation Board, Lansing, Michigan, 1962-64;

Director, Michigan Economic Opportunity Office, Lansing, Michigan, 1964-65;

Director, Employment Security Commission, Detroit, Michigan, 1965-69;

Senior Associate, The Urban Coalition, Washington, D. C., 1969;

Deputy Assistant Secretary for Manpower, U. S. Department of Labor, Washington, D. C., 1969-70;

Assistant Secretary for Manpower, U. S. Department of Labor, Washington, D. C., 1970-73; and

President, Rubber Manufacturers Association, Washington, D. C., 1973-present.

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MEMBERSHIPS AND OFFICES HELD IN PROFESSIONAL, FRATERNAL, BUSINESS, SCHOLARLY, CIVIL, CHARITABLE AND OTHER ORGANIZATIONS

Name	Address	Type	Dates	Office Held
Industrial Relations Research Assn. of Detroit	Detroit, MI	Prof.	1955-58	Member
National Association for Community Development	Washington, DC	Prof.	1965-66	Board of Directors
International Association of Personnel in Employment Security	Frankford, KY	Prof.	1966-68	Member
Shelden Land Company	Lavonia, MI	Bus.	1958-61	Director
Pittsfield Village, Inc.	Ann Arbor, MI	Bus.	1958-61	Director
Birmingham (Mich.) Board of Education	Birmingham, MI	Educ.	1956-60	Vice President
Kingsbury School	Oxford, MI	Educ.	1959-69	President
Six County Community College Study Committee	Detroit, MI	Educ.	1960-62	Chairman, Finance Committee
Travelers Aid Association of America	Chicago, IL	Charity	1976-present	Director
Travelers Aid, Detroit	Detroit, MI	Charity	1966-68	Director
Travelers Aid Society	Washington, DC	Charity	1978-present	Director and Assistant Treasurer
National Institute of Public Management	Washington, DC	Service	1977-80	Director
Highway Users Federation for Safety & Mobility	Washington, DC	Assoc.	1976-present	Director
Detroit Club	Detroit, MI	Social	1960-66	Member
Metamora Club	Metamora, MI	Social	1960-66	Member
Grosse Pointe Club	Grosse Pointe, MI	Social	1966-69	Member
University Club of Detroit	Detroit, MI	Social	1947-1950	Member
International Club of Washington	Washington, DC	Social	1973-present	Member
The City Tavern	Washington, DC	Social	1973-present	Member
National Press Club	Washington, DC	Social	1974-79	Member
Capitol Hill Club	Washington, DC	Social	1974-79	Member

Memberships (cont'd)

Name	Address	Type	Dates	Office Held
Brookings Institution	Washington, DC	Educ.	3/73	Visiting Scholar
Industry Center for Trade Negotiations	Washington, DC	Bus.	1977-79	Director
Greater Washington Board of Trade	Washington, DC	Assoc.	1981-present	Vice Chairman, NAB
University of Maryland Program of Industrial Relations and Labor Studies	College Park, MD	Educ.	1979	Executive Advisory Committee
Chamber of Commerce of the United States	Washington, DC	Assoc.	1973-present	Member, Various Committees
American Society of Association Executives (Key Industry Association Council)	Washington, DC	Assoc.	1979-present	Member
Equal Employment Advisory Council	Washington, DC	Prof.	1976-80	Director

Government experience: List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

While employed in various capacities for Governor Romney of Michigan I served on various State and local boards dealing with labor relations, manpower, and antipoverty concerns.

Member, National Advisory Council on Vocational Education, Washington, D. C., 1975-79.

Member, National Commission on Employment Policy, Washington, D. C., 1977-79.

Member, Office of the Mayor (Washington, D. C.) Employment and Training Services Advisory Board, 1979-present.

Co-chairman, Mayor's Transition Task Force on Human Support and Manpower, Washington, D. C., 1980-81.

Published writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"United States Economic Interests in Immigration Policy," written jointly with Kenneth McLennan, Committee for Economic Development, for The Journal, Institute for Socioeconomic Studies.

Political affiliations and activities: List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Member, Republican Party

Contributed to Republican Candidate for D. C. City Council

Contributed to Connally for President

Contributed several times to Rubber Manufacturers Association Political Action Committee (RVAPAC)

Served on Finance Committee for Jerry Moore, D. C. Councilman at Large

Served on Reagan's Transition Team, Office of Policy Coordination, Economic Affairs, Washington, D. C., 1980-81.

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Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will sever all connections with present employer.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no plans to resume employment with previous employer.

3. Has a commitment been made to you for employment after you leave Federal service?

No.

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes.

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

Participated in many legislative hearings as a witness representing: The Business Roundtable, the Chamber of Commerce, the Rubber Manufacturers Association, and the U. S. Department of Labor.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I would excuse myself as an official of the Department of Labor on any issues in which I had a conflict of interest.

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AETNA LIFE & CASUALTY,
September 22, 1981.

Hon. ORRIN G. HATCH,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HATCH: I am writing this letter to express my support for the nomination of Malcolm R. Lovell as Undersecretary of Labor.

I have come to know Mr. Lovell through my association with the National Alliance of Business which I serve as Chairman, and believe he will make an outstanding Undersecretary. His prior experience as Assistant Secretary of Labor, his continued involvement with the difficult employment issues facing the country as a member of the Council on Employment Policy and his management and policy formulation experience as President of the Rubber Manufacturers Association, provide him with a thorough background for meeting the challenges of this most important position.

On behalf of everyone associated with the National Alliance of Business and myself personally, I would appreciate it if this letter of support for Mr. Lovell's nomination would be entered into the record of the confirmation hearing.

Very truly yours,

JOHN H. FILER, *Chairman.*

QUESTIONS SUBMITTED TO MALCOLM R. LOVELL, JR. CONCERNING OFCCP

Question 1. Assistant Attorney General William Bradford Reynolds has stated the Administration will not seek goals and timetables as a remedy for effects of past discrimination. How will the Department of Labor implement that policy change in administering Executive Order 11246?

Answer. I understand that Assistant Attorney General Reynolds actually said that, in enforcing Title VII and similar statutes, the Justice Department will not support "the use of quotas or any other numerical or statistical formula designed to provide to *non-victims* of discrimination *preferential treatment* based on race, sex, national origin or religion." (Exphasis supplied) To the extent that may represent a "policy change" for the Department of Justice, it is not a policy change for the Department of Labor and will not impact on our administration or enforcement of the Executive Order.

Question 2. The hearings we have had on OFCCP have highlighted OFCCP's preoccupation with process rather than results, harassment of contractors and regulations which allow what amounts to blackmail of contractors. I am requesting that you look into that matter immediately and correct any unprofessional conduct quickly. Within the coming months I will be asking your department what action has been taken to correct this situation.

Answer. I assure you that I share your concern about the need for professionalism in this agency as well as for an emphasis on results rather than process. We have already undertaken certain management initiatives in this regard, and we will take further action as necessary to curb any abuses which we discover. I will be looking forward to reporting satisfactory results of those initiatives to you in the future. In the meantime, I encourage the public to bring any such complaints regarding OFCCP to the attention of the Department of Labor so that we may investigate the circumstances and fashion the necessary remedies.

Question 3. Mr. Lovell, I know that in the past you have worked hard to address one of the principal causes for unemployment and minority and female underrepresentation—the lack of the necessary skills to qualify for openings in the private sector. Has any consideration by you and your staff been given towards using the powers of OFCCP to meet this problem?

Answer. In fact a whole new concept has been recently incorporated into OFCCP's proposed regulations based upon the need for training. The particular proposal would provide an incentive for contractors to become involved in training. Contractor involvement in training groups which have been "underutilized," minorities and females in particular, is a centerpiece of our regulatory proposal.

A contractor could be eligible for, and request approval of, a 5-year affirmative action plan if he meets 3 conditions:

(1) The contractor has an on-site compliance review;

(2) The contractor has an acceptable affirmative action plan (which included both goals or an approved methodology for setting goals during the 5-year period and an internal monitoring mechanism); and

(3) The contractor either agrees to hire graduates of Department of Labor funded training programs or a training program for minorities and women wherever those groups are underutilized.

During this period the OFCCP would not conduct regular compliance reviews, although it would require contractors to inform us of any changes that related to those conditions for eligibility. The OFCCP would, of course, retain the right to investigate complaints during this period.

Since compliance reviews are costly and burdensome to contractors and to the agency, it is intended that freedom from regular reviews will provide additional incentives for contractors to voluntarily undertake the needed training for minorities and women. This freedom from regular reviews does not mean, however, that contractors would be free from any of their legal obligations.

QUESTIONS POSED BY SENATOR WILLIAMS WITH ANSWERS OF MALCOLM R. LOVELL, JR., UNDER SECRETARY OF LABOR DESIGNATE

Question 1. In your opinion, what will the major issues affecting labor be in the 1980's?

Answer. I believe the major issues confronting the Department of Labor in the 1980's, viewing it from the perspective of the beginning of the decade, are as follows:

(1) To encourage a climate in which labor and management are able to achieve a rising rate of productivity to help assure jobs for all our citizens who wish to work;

(2) To carry out the responsibilities given to the Department by Congress and by Executive Order in a fashion which elicits a maximum of cooperation from the parties involved at a minimum cost consistent with meeting regulatory goals;

(3) To increase the efficiency of our labor market services to disadvantaged youth, welfare mothers and unemployed workers with long attachment to the work force; and

(4) To improve the collective bargaining atmosphere in the United States so that the Nation can achieve a high degree of economic competitiveness with the rest of the world and a sense of equity in the division of the rewards of high productivity among workers, stockholders and the public at large.

Question 2. At this time, we hear much support for a relaxation of government regulation. In the labor area in particular, in such areas as occupational safety and health and basic wage guarantees, regulations which may seem costly in the short run have long range positive effects on productivity and the preservation of our human resources. Please comment on this issue, giving us your views and explaining what contribution you believe you can make to decisions on these issues in your role as Under Secretary?

Answer. Regulations in the labor area, including OSHA regulations, are intended to have beneficial long-term effects on workers' health and productivity. However, in determining how best to achieve such truly important goals as occupational safety and health, employee training or basic wage guarantees, an essential part of the regulatory process is the constant re-examination of the means which are used to attain such goals. After years of sometimes excessive and intrusive government dictation of the means to achieve worker safety or other goals, many areas can benefit from a re-evaluation of enforcement techniques and the level of regulatory detail. In these areas it may be possible to increase real worker protection at a significantly lower overall cost to society by establishing regulations which are less cumbersome to work with and less costly to apply or satisfy. This will maximize the enforcement resources of the Department as well as the level of voluntary actions in support of the goals mandated by law. OSHA offers an example where the Department must examine the cost-effectiveness of alternative approaches to the hazard addressed by a particular standard. By establishing the feasible level of protection and by analyzing the cost of each of the alternative approaches to achieve that level, OSHA will be able to design standards that provide adequate protection for workers without any unnecessary costs to society. It will be my role as Under Secretary to assist in making these crucial decisions and to apply the perspectives of my years in both government and the private sector to the difficult judgments which must be made throughout the Department.

Question 3. In recent years, there have been proposals to repeal or partially repeal the Davis-Bacon Act. Please give the position of the Reagan Administration on the repeal or partial repeal of the Davis-Bacon Act?

Answer. The Administration does not favor repeal of the Davis-Bacon Act. However, the Administration has proposed to overhaul the Department of Labor's system for administering the Act. The proposed changes deal with some of the most frequent complaints cited about Davis-Bacon, including elimination of the 30 percent

rule concerning prevailing wage rates, prohibition against using urban wage rates for rural areas and opening up more opportunities for the use of helpers and trainees. Further, the proposed rules concern the reduction of the paperwork burden on employers.

Question 4. On September 23, 1981, the Labor and Investigations Subcommittees of the Senate Committee on Labor and Human Resources held joint oversight hearings on OSHA. Representatives of organized labor voiced the complaint that they felt uninvolved in the program development at OSHA, while the Administration had been regularly consulting with the business community. How do you view your role as Under Secretary as providing opportunities to facilitate greater contact between OSHA and the labor movement?

Answer. I understand that Assistant Secretary Thorne Auchter of OSHA has consulted with labor representatives on key policy issues, and that he intends to continue doing so. It is my understanding that his door has always been open to labor and that he is committed to open-access for representatives from the labor movement. I personally believe that organized labor has a legitimate role to play in offering suggestions and comments on the development of policy by OSHA. Open access is and will be the policy of the Department, although this does not mean that organized labor will always be satisfied with OSHA policies as they are finally determined. However, I intend to be available to members of the labor movement if they believe I can be helpful in their relations with OSHA.

Question 5. OSHA has several advisory committees which provide expertise in particular areas of safety and health, such as, for example, in the construction field. Additionally, the OSH Act created NACOSH (the National Advisory Committee on Occupational Safety and Health) and NIOSH (the National Institute for Occupational Safety and Health) as bodies to provide, respectively, policy and scientific information for agency use. There has been some criticism that OSHA has not coordinated well on all issues with the advisory committees or with NACOSH and NIOSH. How do you believe that the Under Secretary could best promote smooth functioning between OSHA and these related groups?

Answer. Assistant Secretary Auchter is using OSHA's advisory committees as an important source of advice on his new policies for OSHA. I will be happy to be of assistance by recommending individuals with the requisite expertise for these committees or by meeting with the groups as constituted. I am also willing to meet with my counterpart at the Department of Health and Human Services if that would be helpful for a smoother OSHA-NIOSH relationship.

Question 6. Both Secretary Donovan and Assistant Secretary for OSHA, Thorne Auchter, have characterized OSHA's current number of inspectors, at 1,200, as limited at best. Yet recent budget projections indicate that these numbers will be decreasing further. What role do you see you can play in ensuring that OSHA's program needs are well-communicated to decision-makers both within and outside the Department of Labor?

Answer. With limited resources available to OSHA and other Federal agencies, it is more important than ever that Departmental programs are well-managed. Mr. Auchter has begun to put new management systems into place at OSHA. For instance, a new system has been instituted to measure the performance of each of OSHA's field offices. Another new system to direct the agency's limited inspection resources to the most hazardous manufacturing workplaces will be implemented, beginning October 1. I intend to devote a great deal of attention to the internal management of all Labor Department programs, including OSHA. I believe that I can also help further OSHA's objectives by helping to articulate the program needs and goals of OSHA to the business, labor and other groups with which I will meet as Under Secretary.

Question 7. The mine safety and Health Administration is a relative newcomer to the Department on Labor. It is important that its functions are well-integrated within the rest of the Department. Describe how your duties as under Secretary can contribute to this continuing effort.

Answer. MSHA has been in the Department of Labor since March 1978. In my view, it is functioning well as a member of this Department. As Under Secretary, part of my responsibility will be to ensure the MSHA, like all other Agencies within the Department, is well-integrated with the rest of the Department and participates freely in the development of policies relevant to it.

Question 8. There are many similarities in the OSHA and MSHA laws and some areas of potential overlap. There are also legislative proposals to transfer jurisdiction in certain areas from one agency to another. What role do you believe you can play in coordinating these potentially competing claims?

Answer. When MSHA was in the Department of the Interior efforts were made through a memorandum of understanding (MOU) with OSHA to help solve jurisdic-

tional problems that existed. The Congressional transfer of MSHA to the Department of Labor integrated MSHA into the same Department as OSHA so that questions of jurisdiction could more easily be handled. This solution has worked in a timely and efficient fashion.

MSHA and OSHA currently have a MOU which was updated after MSHA came into the Department of Labor. For the most part, this MOU has solved the vast majority of the jurisdictional problems which had previously existed. However, the MOU does state that the Secretary may assign jurisdiction to one agency or the other for convenience of administration. I believe that my role can be to review those areas of potential overlap that come to our attention and make recommendations to the Secretary, whose decision will ultimately resolve any such conflicts. Also, as the Department continues to review the legislative proposals to transfer jurisdiction in certain areas from one agency to another, one of my functions will be to ensure that the Department obtains the views and concerns of all affected parties.

Question 9. This year there are several legislative proposals to amend the Mine Safety and Health Act. Mine workers are very concerned about losing the hard won safety and health guarantees in that Act. Will you, as the Under Secretary, ensure free access for the mine workers to policy makers in the Department so that the workers' concerns are understood and so that policy can be formulated with these concerns well-taken into account?

Answer. Yes; the Secretary and I are deeply committed to ensuring the safety and health of all American workers, including the mine workers. I am aware of the legislative proposals to amend the Federal Mine Safety and Health Act of 1977, and I know that the Department is currently studying those proposals. I believe that it is essential for us to obtain the views of both management and labor as the Department begins to formulate its policy, and to that end as Under Secretary I will do my best to help affected groups have free access to those in the Department who are considering policy proposals in this area. I can assure you that both the Secretary and I believe that should any legislative changes or transfers of safety and health responsibilities be required, we would work to implement them in a manner that would not diminish real protection for the mine workers.

The CHAIRMAN. With that, we will recess.

[Whereupon, at 11:15 a.m., the committee recessed, to reconvene at the call of the Chair.]

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